

DEC 28 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JANEC BAENA SALGADO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-74946

Agency No. A95-591-608

MEMORANDUM^{*}

JANEC BAENA SALGADO,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-71301

Agency No. A95-591-608

On Petition for Review of an Order of the
Board of Immigration Appeals

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted December 3, 2007 **

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Janec Baena Salgado, a native and citizen of Mexico, petitions for review of the decision of the Board of Immigration Appeals affirming the immigration judge's denial of petitioner's application for cancellation of removal. Petitioner also seeks review of the BIA's denial of his motion to reopen which was based on petitioner's additional evidence concerning his United States citizen son's medical condition.

Petitioner contends that the IJ violated his due process rights by failing to *sua sponte* compel the testimony of petitioner's ex-wife regarding hardship. Petitioner failed to demonstrate that additional testimony would have affected the outcome of the proceedings, *see Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (requiring prejudice to prevail on a due process challenge). Petitioner also contends that the IJ erred by not properly considering the cumulative hardship effect of removal on his qualifying relatives, but we reject this contention where the IJ stated explicitly that he was considering the cumulative impact in finding no

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

exceptional and extremely unusual hardship. *See Fernandez v. Gonzales*, 439 F.3d 592, 603 (9th Cir. 2006)

The evidence that petitioner presented with his motion to reopen concerned the same basic hardship grounds as his application for cancellation of removal, *see Fernandez*, at 602-03, and we therefore lack jurisdiction to review the BIA's discretionary determination that the evidence was insufficient to establish a prima facie case of hardship. *See id.* at 601.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.